

# NOTICE

## TOBACCO LIABILITY ACT, H.R.S., Chapter 675 Manufacturers Not Participating in the Tobacco "Master Settlement Agreement"

DATE: JULY 21, 2000  
TO: TOBACCO MANUFACTURERS

Act No. 188 was passed in the 1999 Regular Legislative Session and signed by Governor Cayetano on July 2, 1999. This Act was codified into Hawaii Revised Statutes, Chapter 675. The effective date is July 2, 1999.

This statute provides that if cigarettes or roll-your-own tobacco manufactured by your company is sold in Hawaii, and your company chooses not to participate in the Master Settlement Agreement," your company is required to do the following:

### **(§675-3, H.R.S.)**

- (a) Establish an escrow fund in a federally or state chartered financial institution by April 15, 2000. The manufacturer may choose the institution; however, the following conditions must be met:
  - (1) The institution must not be affiliated with any tobacco product manufacturer.
  - (2) The institution must have assets of at least one billion dollars.
  - (3) The escrow arrangement must require that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibit the tobacco products manufacturer placing funds into escrow from using, accessing, or directing the use of the funds' principal inconsistent with §675-3(2), H.R.S.
  - (4) The tobacco products manufacturer may receive the interest or other appreciation on the escrow fund.
- (b) Certify to the Attorney General no later than April 30, 2000 or April 30 following the year of activity, that an escrow fund was established and provide the Attorney General with a copy of the escrow agreement signed by the tobacco product manufacturer and financial institution.
- (c) Place into a qualified escrow fund by April 15 of the year following the year shown below, the following amounts:
  - (1) 1999: \$.0094241 per unit sold July 2, 1999 through December 31, 1999;
  - (2) 2000: \$.0104712 per unit sold;
  - (3) 2001 and 2002: \$.0136125 per unit sold;
  - (4) 2003 through 2006: \$.0167539 per unit sold;
  - (5) 2007 and each year thereafter: \$.0188482 per unit sold.
- (d) Certify to the Attorney General by April 30 of each year the number of units sold in Hawaii and the amount deposited into the escrow fund. Verification of the deposit must be evidenced by a statement from the financial institution.

### Penalties

### **(§675-3(3), H.R.S.)**

The Attorney General may bring a **civil** action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under the Act. Any applicable manufacturer that fails in any year to place into escrow the funds required shall:

- (a) Be required within 15 days to place the required funds into escrow. The court, upon a finding of a violation, may impose a civil penalty not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.
- (b) For a knowing violation, be required within 15 days to place the required funds into escrow. The court, upon a finding of a knowing violation may impose a civil penalty not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.
- (c) For a second knowing violation, be prohibited from selling cigarettes to consumers within the State (directly or indirectly) for a period not to exceed two years.

Questions concerning this Act should be directed to:

Department of the Attorney General  
Tax Division - Tobacco Enforcement Unit  
425 Queen Street  
Honolulu, Hawaii 96813  
(808) 586-1470